In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY, PETITIONER

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's order of December 3, 1973, inviting the Solicitor General to file a brief expressing the views of the United States.

QUESTION PRESENTED

Whether a state court has jurisdiction in a suit under Section 301 of the Labor Management Relations Act to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach arguably is an unfair labor practice under the National Labor Relations Act.

STATEMENT

Petitioner, a general contractor whose operations are subject to the National Labor Relations Act, 29 U.S.C., 151, *et seq.*, brought suit under Section 301

of the Labor Management Relations Act, 29 U.S.C. 185, in a Florida state court, seeking an injunction prohibiting the respondent unions from violating a no-strike clause in the collective bargaining agreement between petitioner and the unions. The clause (Pet. 4) provides as follows:

> **ARTICLE VI**
>
> There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation.

The trial court issued a temporary restraining order prohibiting the unions from causing any work stoppage in violation of Article VI of the collective agreement (Pet. App. 1a-2a). The unions then applied to a Florida District Court of Appeals for a writ of prohibition, contending that, because the alleged contract breach was arguably an unfair labor practice under Section 8(b)(4)(i)(D) of the National Labor Relations Act,[1] 29 U.S.C.

---

[1] Section 8(b)(4) makes it an unfair labor practice for a labor organization or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any

158(b)(4)(i)(D), the activities sought to be enjoined fell within the exclusive jurisdiction of the National Labor Relations Board. The District Court of Appeals denied the writ of prohibition (Pet. App. 3a-8a).

The Supreme Court of Florida vacated the decision of the District Court of Appeals. The Florida Supreme Court (with two judges dissenting) held that, since the strike enjoined by the trial court was, "at least arguably, a federally prohibited unfair labor practice," the jurisdiction which the state courts would otherwise have to enjoin a strike in breach of a no-strike clause was preempted by the Board's exclusive jurisdiction (Pet. App. 10a-11a).

DISCUSSION

1. The conclusion of the Florida Supreme Court that a state court lacks jurisdiction to enjoin a breach of a collective bargaining agreement where that breach is arguably an unfair labor practice is, in our view, incorrect. The preemption doctrine developed in such cases as *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236,[2] does not apply to contract

---

person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is–

* * * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *.

[2] *Garmon* holds that, where an activity is either arguably protected by Section 7, or arguably prohibited by Section 8, of the National Labor Relations Act, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted" (359 U.S. at 245).

actions under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185. Thus, in *Local 174 Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 101, n. 9, this Court stated that the *Garmon* doctrine is "not relevant" to Section 301 actions. In *Smith* v. *Evening News Association*, 371 U.S. 195, 197, this Court squarely held that "[t]he authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by §301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301."[3] Accordingly, in that case the Court sustained the power of the state court to entertain a suit for damages brought by an employee, alleging that the employer had violated the clause of the collective agreement barring discrimination because of union membership.

These decisions reflect the legislative history of Section 301, which, as this Court noted in *Dowd Box Co., Inc.* v. *Courtney*, 368 U.S. 502, 513, shows that "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law.'" It is particularly appropriate that the present case, involving an arguable violation of Section 8(b)(4)(i)(D) of the National Labor Relations Act, concerning jurisdictional disputes, be left to those "usual processes." Section 10(k) of the Act, 29 U.S.C. 160(k), which establishes a special procedure for charges involving jurisdictional disputes, provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the

---

[3] This holding has been recently reaffirmed in *Motor Coach Employees of America* v. *Lockridge*, 403 U.S. 274, 297-298.

> meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

As this Court has observed, Section 10(k) "not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions * * *." *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261, 266.[4] Depriving state courts of jurisdiction to enforce collective bargaining agreement provisions respecting settlement of jurisdictional disputes whenever an unfair labor practice is arguably involved would necessarily weaken the incentive to enter into such agreements.

Moreover, the Board has interpreted Section 10(k) as meaning that "if all parties to a dispute have agreed on a method for the adjustment of the dispute, the Board is barred from making * * * a determination [regarding the issues in dispute]." *Laborers, Local 670 (Southern Illinois Builders Ass'n),* 189 NLRB 715,

---

[4] See also Section 203(d) of the Labor Management Relations Act, 29 U.S.C. 173(d), which provides:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. * * *

716. To permit state courts to enforce agreed upon methods for settling jurisdictional disputes would be in harmony with this Board policy.[5]

2. That injunctive relief was sought does not affect the Florida court's jurisdiction, although it may affect its power to grant the relief sought. "The nature of the relief available after jurisdiction attaches is, of course, different from the question whether there is jurisdiction to adjudicate the controversy." *Avco Corp.* v. *Aero Lodge 735,* 390 U.S. 557, 561.

Thus, *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770,* 398 U.S. 235, holds that the Norris-La Guardia Act, 29 U.S.C. 104, does not bar a federal court in a Section 301 suit from enjoining a strike in breach of a no-strike commitment, if, *inter alia,* the collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure applicable to the grievance in question, and the petitioner is ready to proceed with arbitration (*id.* at 253-254). This Court has not decided whether the same restrictions would be applicable to a Section 301 suit, like the present one, which was brought in a state court and not removed to a federal court.[6] If these prerequi-

---

[5] Compare this Court's decision in *Gateway Coal Co.* v. *United Mine Workers of America,* No. 72-782, decided January 8, 1974.

[6] But see *McCarroll* v. *Los Angeles County Dist. Council of Carpenters,* 49 Cal. 2d 45, 63, 64, 315 P. 2d 322, 332 certiorari denied, 355 U.S. 932, holding that, "whether or not Congress could deprive state courts of the power to give * * * [equitable] remedies when enforcing collective bargaining agreements, it has not attempted to do so either in the Norris-LaGuardia Act or section 301," and that "there is no invariable requirement, implicit in the federal system, that a state court enforcing a federal right must not go beyond the remedies available in a federal court."

sites to injunctive relief are applicable within the state, it may be questioned whether they were satisfied in the present case.[7] Nor has this Court determined, or the Florida court considered, to what extent a state court is free to abstain in a suit of this sort.[8] These are issues to be determined after the suit has been reinstated.

CONCLUSION

The decision of the Supreme Court of Florida that state court jurisdiction over petitioner's suit was

---

[7] Thus, the Florida District Court of Appeals, in rejecting respondents' challenge to the trial court's jurisdiction, noted:

> [W]e do not necessarily hold that the temporary restraining order entered in the case pending before the respondent [court] is free from error by reason of the court's failure to include therein an order directing the plaintiff-employer and the relator-union to arbitrate or submit their grievances to the joint board for expeditious resolution. While the failure to so direct may affect the correctness of the temporary restraining order, that is a matter not going to the jurisdiction of the respondent court. Rather, it is a matter which is subject to being reviewed by interlocutory appeal in this court or on review from final judgment in the event the parties should elect to litigate further in the lower court. [Pet. App. 7a-8a.]

[8] Cf. *Boys Market, supra,* 398 U.S. at 247-249.

preempted by the National Labor Relations Act should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Deputy Associate General Counsel,
ELINOR HADLEY STILLMAN,
Attorney,
National Labor Relations Board.

JANUARY 1974.